

## Office of the Secretary of Defense

## § 310.31

(i) Requests by individuals for access to records pertaining to themselves made under the Freedom of Information Act (5 U.S.C. 552) or the DoD Freedom of Information Act Program (32 CFR part 286) or DoD Component instructions implementing the DoD Freedom of Information Act Program are processed under the provisions of that reference.

(ii) Requests by individuals for access to records pertaining to themselves made under the Privacy Act of 1971 (5 U.S.C. 552a), this part, or the DoD Component instructions implementing this part are processed under this part.

(iii) Requests by individuals for access to records about themselves that cite both Acts or the implementing regulations and instructions for both Acts are processed under this part except:

(A) When the access provisions of the DoD Freedom of Information Act Program (32 CFR part 286) provide a greater degree of access; or

(B) When access to the information sought is controlled by another federal statute.

(C) If the former applies, follow the provisions of 32 CFR part 286; and if the latter applies, follow the access procedures established under the controlling statute.

(iv) Requests by individuals for access to information about themselves in systems of records that do not cite either Act or the implementing regulations or instructions for either Act are processed under the procedures established by this part. However, there is no requirement to cite the specific provisions of this part or the Privacy Act (5 U.S.C. 552a) when responding to such requests. Do not count these requests as Privacy Act request for reporting purposes (see subpart I).

(2) Do not deny individuals access to personal information concerning themselves that would otherwise be releasable to them under either Act solely because they fail to cite either Act or cite the wrong Act, regulation, or instruction.

(3) Explain to the requester which Act or procedures have been used when granting or denying access under either Act (see also paragraph (j)(1)(iv) of this section).

(k) *Time limits.* Normally acknowledge requests for access within 10 working days after receipt and provide access within 30 working days.

(l) *Privacy case file.* Establish a Privacy Act case file when required (see paragraph (p) of § 310.32 of this subpart).

[51 FR 2364, Jan. 16, 1986. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 56 FR 57800, Nov. 14, 1991]

### § 310.31 Denial of individual access.

(a) *Denying individual access.* (1) An individual may be denied formally access to a record pertaining to him or her only if the record:

(i) Was compiled in reasonable anticipation of civil action (see paragraph (g) of § 310.30)

(ii) Is in a system of records that has been exempted from the access provisions of this regulation under one of the permitted exemptions (see subpart F).

(iii) Contains classified information that has been exempted from the access provision of this part under blanket exemption for such material claimed for all DoD records system (see § 310.50(c) of subpart F).

(iv) Is contained in a system of records for which access may be denied under some other federal statute.

(2) Only deny the individual access to those portions of the records from which the denial of access serves some legitimate governmental purpose.

(b) *Other reasons to refuse access.* (1) An individual may be refused access if:

(i) The record is not described well enough to enable it to be located with a reasonable amount of effort on the part of an employee familiar with the file; or

(ii) Access is sought by an individual who fails or refuses to comply with the established procedural requirements, including refusing to name a physician to receive medical records when required (see paragraph (f) of § 310.30) or to pay fees (see § 310.33 of this subpart).

(2) Always explain to the individual the specific reason access has been refused and how he or she may obtain access.

(c) *Notifying the individual.* Formal denials of access must be in writing and include as a minimum:

(1) The name, title or position, and signature of a designated Component denial authority;

(2) The date of the denial;

(3) The specific reason for the denial, including specific citation to the appropriate sections of the Privacy Act (5 U.S.C. 552a) or other statutes, this part, DoD Component instructions or Code of Federal Regulations (CFR) authorizing the denial;

(4) Notice to the individual of his or her right to appeal the denial through the Component appeal procedure within 60 calendar days; and

(5) The title or position and address of the Privacy Act appeals official for the Component.

(d) *DoD Component appeal procedures.* Establish internal appeal procedures that, as a minimum, provide for:

(1) Review by the head of the Component or his or her designee of any appeal by an individual from a denial of access to Component records.

(2) Formal written notification to the individual by the appeal authority that shall:

(i) If the denial is sustained totally or in part, include as a minimum:

(A) The exact reason for denying the appeal to include specific citation to the provisions of the Act or other statute, this part, Component instructions or the CFR upon which the determination is based;

(B) The date of the appeal determination;

(C) The name, title, and signature of the appeal authority;

(D) A statement informing the applicant of his or her right to seek judicial relief.

(ii) If the appeal is granted, notify the individual and provide access to the material to which access has been granted.

(3) The written appeal notification granting or denying access is the final Component action as regards access.

(4) The individual shall file any appeals from denial of access within no less than 60 calendar days of receipt of the denial notification.

(5) Process all appeals within 30 days of receipt unless the appeal authority determines that a fair and equitable review cannot be made within that period. Notify the applicant in writing if

additional time is required for the appellate review. The notification must include the reasons for the delay and state when the individual may expect an answer to the appeal.

(e) *Denial of appeals by failure to act.* A requester may consider his or her appeal formally denied if the authority fails:

(1) To act on the appeal within 30 days;

(2) To provide the requester with a notice of extension within 30 days; or

(3) To act within the time limits established in the Component's notice of extension (see paragraph (d)(5) of this section).

(f) *Denying access to OPM records held by DoD Components.* (1) The records in all systems of records maintained in accordance with the OPM government-wide system notices are technically only in the temporary custody of the Department of Defense.

(2) All requests for access to these records must be processed in accordance with the Federal Personnel Manual (5 CFR parts 293, 294, 297 and 735) as well as the applicable Component procedures.

(3) When a DoD Component refuses to grant access to a record in an OPM system, the Component shall instruct the individual to direct his or her appeal to the appropriate Component appeal authority, not the Office of Personnel Management.

(4) The Component is responsible for the administrative review of its denial of access to such records.

[51 FR 2364, Jan. 16, 1986. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 56 FR 57800, Nov. 14, 1991]

### § 310.32 Amendment of records.

(a) *Individual review and correction.* Individuals are encouraged to review the personnel information being maintained about them by DoD Components periodically and to avail themselves of the procedures established by this part and any other Component regulations to update their records.

(b) *Amending records.* (1) An individual may request the amendment of any record contained in a system of records pertaining to him or her unless the system of record has been exempted specifically from the amendment